IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1677 OF 2006
IN
SUIT NO.3019 OF 2004

Kailash Maruti Suryavanshi ..Plaintiff.
Vs.
Ashok Maruti Suryavanshi
& Ors. ..Defendants.

Mr.Ashok Saraogi with Mr.S.K.Chaurasia for the Plaintiff.
None for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 24TH JULY, 2007

P.C. :

The suit is filed for a declaration that a family settlement dated 10.4.1990, document dated 2.5.1988 and further documents of surrender dated 4.3.2004 are bad in law, illegal and cannot be enforced, having been obtained by fraud and force.

2. The Plaintiff has also sought an order restraining the Defendants from disturbing his alleged possession in respect of Shop Nos.8 and 9 and residential premises being Room No.12. The present Notice of Motion is restricted to the reliefs claimed in respect of Room No.12.

3. As far as the main prayer that the said documents are illegal and unenforceable is

concerned, the Plaintiff has not made out any case. The Plaintiff has, inter-alia, alleged that he is a bachelor and was therefore dependent upon the other members of his family for food and shelter and that therefore he executed all documents without understanding the same. The averments in support of the prayer are vague and without particulars. Further, the said averments do not indicate or establish any case of fraud or coercion entitling the Plaintiff to have the documents cancelled.

4. The suit is filed almost fourteen years after the documents were executed. By the said documents, the Plaintiff has clearly given up all his rights, title and interest in the said property and a deed of confirmation was executed in September, 1990 (Exhibit "A" to the plaint) in respect of the said family settlement dated 10.4.1990. Clause 1 thereof expressly states that the Plaintiff was amongst those who had transferred, assigned and relinquished all his rights, title and interest in the property inter-alia of the Defendants. In Clause 3, the Plaintiff has further declared that the Defendants were to be the sole and absolute owners of the property and no other person or persons has or have any rights, titles, claims, interests, property

claim or demand of any nature whatsoever in, to or upon the said property.

5. The Plaintiff's contention is that after the suit had been filed he had been dispossessed in respect of the said Room No.12. There is nothing on record to indicate that the Plaintiff was in possession thereof and/or was entitled to remain in possession thereof.

6. Mr.Saraogi submitted that he was a tenant in respect of Room No.12 in addition to his claim for possession. There is nothing to indicate or establish the alleged right of tenancy either.

7. No ad-interim reliefs have been obtained. The Plaintiff has alleged that the said Room No.12 has now been given out to I.C.I.C.I. but the Plaintiff is not aware of the transaction between the Defendants and the I.C.I.C.I.

8. Prima-facie, there is nothing to indicate that the Plaintiff has retained any right in respect of the said Room no.12. The Plaintiff states that he is in possession of Room Nos.8 and 9.

9. In the circumstances, the Notice of Motion is dismissed.